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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,220	07/07/2006	Tatsuo Tsutsui	P29489	2156

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EXAMINER	
BOSWORTH, KAMI A	

ART UNIT	PAPER NUMBER
3767	

NOTIFICATION DATE	DELIVERY MODE
09/11/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Office Action Summary	Application No.	Applicant(s)	
	10/574,220	TSUTSUI, TATSUO	
	Examiner	Art Unit	
	KAMI A. BOSWORTH	3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 June 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 March 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is responsive to the amendment filed on 6/17/2009. As directed by the amendment: claims 1, 3, 4, and 6 have been amended. Thus, claims 1-6 are presently pending in this application.

Response to Arguments

2. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohki et al. (US Pat 6,298,846) in view of Cocozza (US Pat 4,013,075).

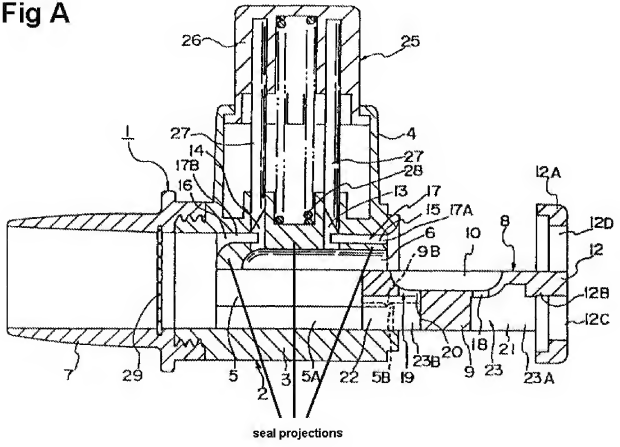
5. Re claim 1, Ohki et al. disclose a device 1 (Fig 7) to deliver a powdery medicine for nasal cavity (the phrase "for nasal cavity" is functional language and has not been given any weight because it is narrative in form; furthermore, the recited structure is capable of use in the nasal cavity) to spray a powdery medicine filled in a capsule K (Fig 8) by loading the capsule between a connection port 17B (Fig 7) on a side of a nozzle 7

(Fig 7) to spray the powdery medicine into the nasal cavity and a connection port 17A (Fig 7) that supplies spray air to the nozzle (Col 8, Lines 52-57), the capsule being formed with a hole H1,H1,H1,H2 (Fig 9) on each end (formed after puncture by cutter 25, Fig 9; Col 10, Lines 10-16) in communication with a respective one of the connection ports and supplying spray air through the inside of the capsule to the nozzle (as seen in Fig 9; Col 11, Lines 26-42), the device comprising: a main body 3 (Fig 7) having a loading space 5 (Fig 7) and configured to hold the capsule between the connection ports (as seen in Fig 8,9); a capsule holder 8 (Fig 7) that holds the capsule filled with the powdery medicine and is slidably movable from the main body, the capsule holder configured to position the capsule in a loading position in the loading space between the connection ports, the capsule holder being movable forward and backward relative to the loading position of the capsule (Col 8, Lines 25-39); a cutter 25 (Fig 7) that partially cuts off both ends of the capsule that moves forward to the loading position while being held by the capsule holder to make the holes on opposite ends of the capsule (Col 10, Lines 10-19), the cutter including a pair of blades 27,27 (Fig 7) secured in parallel with each other at opposite sides of the loading space between the connection ports (as seen in Fig 7), each blade having a blade tip (as seen in Fig 7); and a positioning guide 5A,5B,9B (Fig 2,3,7) located forwardly of the cutter (as seen in Fig 7) to guide the ends of the capsule that moves forward to the loading position while being held by the capsule holder and causing the capsule to slide as far as a predetermined position (Col 7, Lines 48-61, wherein peripheral portions 6 (Fig 7) of the main body that define at least a portion of both of the connection ports (as seen in Fig 7)

are formed as seal projections (best seen in Fig A below) that project from surfaces of the blades (as seen in Fig 7) toward the loading space (Col 10, Lines 49-52), and the distance between the seal projections is shorter than the length of the capsule after cutting off both ends by the cutter (as seen in Fig 9), so that both ends of the capsule loaded between them are pressed by both seal projections (Col 10, Lines 49-52). Ohki et al. disclose that one blade (that which is on the left in the drawings) has a blade tip directed in a direction opposing the advancing direction of the capsule holder (as seen in Fig 7), but does not disclose that both blade tips are directed in a direction opposing the advancing direction of the capsule holder. However, it would have been an obvious matter of design choice to modify Ohki et al. to include both blade having a blade tip directed in a direction opposing the advancing direction of the capsule holder since applicant has not disclosed that having this feature solves any stated problem or is for any particular purpose and it appears that the device would perform equally well with either designs. Furthermore, absent a teaching as to the criticality of this arrangement, this particular arrangement is deemed to have been known by those skilled in the art since the instant specification and evidence of record fail to attribute any significance (novel or unexpected results) to a particular arrangement. In *re Kuhle*, 526 F.2d 553,555,188 USPQ 7, 9 (CCPA 1975). Furthermore, Ohki et al. does not disclose a pump. Cocozza, however, teaches a device (best seen in Fig 9) to deliver a powdery medicine for nasal cavity to spray a powdery medicine filled in a capsule 13 (Fig 9; Col 4, Lines 6-7) by loading the capsule between a connection port 37 (Fig 10) on a side of a nozzle 32 (Fig 10) and a connection port 35 (Fig 10) on a side of a pump 33 (Fig 9)

that supplies spray air to the nozzle (Col 4, Lines 23-25) for the purpose of providing an air supply instead of having to inhale to move the powdery medicine (Col 4, Lines 23-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ohki et al. to include a pump, as taught by Cocozza, for the purpose of providing an air supply instead of having to inhale to move the powdery medicine (Col 4, Lines 23-25).

Fig A



6. Re claim 2, Ohki et al. disclose that the positioning guide includes a pair of protrusions 5B,9A (Fig 2,3) opposed to each other and a storage space 18,19 (Fig 4) is formed between the blades and the protrusions placed on a side thereof for discharging cut ends of the capsule cut off by the blades (Col 9, Lines 3-18).

7. Re claim 3, Ohki et al. disclose that the capsule holder is configured in the manner of a drawer (as seen in Fig 7) having a recessed groove 10 (Fig 7) to hold the capsule, and to move forward and backward relative to the loading position of the capsule (Col 8, Lines 25-39 and Col 10, Lines 44-57).

8. Re claim 6, Ohki et al. disclose a device 1 (Fig 7) to deliver a powdery medicine for a nasal cavity (the phrase "for nasal cavity" is functional language and has not been given any weight because it is narrative in form; furthermore, the recited structure is capable of use in the nasal cavity) to spray a powdery medicine filled in a capsule K (Fig 8) by loading the capsule between a connection port 17B (Fig 7) on a side of a nozzle 7 (Fig 7) to spray the powdery medicine into the nasal cavity and a connection port 17A (Fig 7) that supplies spray air to the nozzle (Col 8, Lines 52-57), the capsule being formed with a hole H1,H1,H1,H2 (Fig 9) on each end (formed after puncture by cutter 25, Fig 9; Col 10, Lines 10-16) in communication with a respective one of the connection ports and supplying spray air through the inside of the capsule to the nozzle (as seen in Fig 9; Col 11, Lines 26-42), the device comprising: a main body 3 (Fig 7) having a loading space 5 (Fig 7) and configured to hold the capsule between the connection ports (as seen in Fig 8,9); a capsule holder 8 (Fig 7) that holds the capsule filled with the powdery medicine, the capsule holder being movable between the connection port on the side of the nozzle and the connection port on the side of the pump, the capsule holder being movable forward and backward relative to a loading position of the capsule in the loading space of the main body (Col 8, Lines 25-39 and Col 10, Lines 44-57); and a cutter 25 (Fig 7) that partially cuts off both ends of the

capsule that moves forward to the loading position while being held by the capsule holder to make the holes on opposite ends of the capsule (Col 10, Lines 10-19), the cutter includes a pair of blades 27,27 (Fig 7) secured in parallel with each other at opposite sides of the loading space between the connection ports (as seen in Fig 7), each blade having a blade tip (as seen in Fig 7); wherein peripheral portions 6 (Fig 7) of the main body that define at least a portion of both of the connection ports (as seen in Fig 7) are formed as seal projections (best seen in Fig A above) that project from surfaces of the blades (as seen in Fig 7) toward the loading space (Col 10, Lines 49-52), and the distance between the seal projections is shorter than the length of the capsule after cutting off both ends by the cutter (as seen in Fig 9), so that both ends of the capsule loaded between them are pressed by both seal projections (Col 10, Lines 49-52). Ohki et al. disclose that one blade (that which is on the left in the drawings) has a blade tip directed in a direction opposing the advancing direction of the capsule holder (as seen in Fig 7), but does not disclose that both blade tips are directed in a direction opposing the advancing direction of the capsule holder. However, it would have been an obvious matter of design choice to modify Ohki et al. to include both blade having a blade tip directed in a direction opposing the advancing direction of the capsule holder since applicant has not disclosed that having this feature solves any stated problem or is for any particular purpose and it appears that the device would perform equally well with either designs. Furthermore, absent a teaching as to the criticality of this arrangement, this particular arrangement is deemed to have been known by those skilled in the art since the instant specification and evidence of record fail to attribute

any significance (novel or unexpected results) to a particular arrangement. In *re Kuhle*, 526 F.2d 553,555,188 USPQ 7, 9 (CCPA 1975). Furthermore, Ohki et al. does not disclose a pump. Cocozza, however, teaches a device (best seen in Fig 9) to deliver a powdery medicine for nasal cavity to spray a powdery medicine filled in a capsule 13 (Fig 9; Col 4, Lines 6-7) by loading the capsule between a connection port 37 (Fig 10) on a side of a nozzle 32 (Fig 10) and a connection port 35 (Fig 10) on a side of a pump 33 (Fig 9) that supplies spray air to the nozzle (Col 4, Lines 23-25) for the purpose of providing an air supply instead of having to inhale to move the powdery medicine (Col 4, Lines 23-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ohki et al. to include a pump, as taught by Cocozza, for the purpose of providing an air supply instead of having to inhale to move the powdery medicine (Col 4, Lines 23-25).

9. Re claim 5, Ohki et al. disclose that the diameter for each hole formed on each end of the capsule by the cutter is set to a size substantially identical with or larger than the diameter for the opening of each of the connection ports in communication with the hole (as seen in Fig 7).

10. Re claim 6, Ohki et al. disclose that the capsule holder is configured in the manner of a drawer (as seen in Fig 7) having a recessed groove 10 (Fig 7) to hold the capsule, and to move forward and backward relative to the loading position of the capsule (Col 8, Lines 25-39 and Col 10, Lines 44-57).

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMI A. BOSWORTH whose telephone number is (571)270-5414. The examiner can normally be reached on Monday - Thursday, 7:00 am to 4:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. A. B./
Examiner, Art Unit 3767
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767